STATE OF MICHIGAN

COURT OF APPEALS

EMIR IBRAHIMOVIC,

Plaintiff-Appellant,

v

DAVID ZIMMERMAN,

Defendant-Appellee,

and

MEDMARC CASUALTY INSURANCE COMPANY,

Intervenor-Defendant.

UNPUBLISHED
July 1, 2014

No. 314139
Macomb Circuit Court
LC No. 2008-000282-NM

Before: SAWYER, P.J., and METER and FORT HOOD, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant David Zimmerman ("defendant") in this legal-malpractice action. We affirm.

Plaintiff allegedly sustained injuries in a motor-vehicle accident in December 2002. Defendant had previously represented plaintiff in an unrelated matter, and he referred plaintiff to attorney Robert Mazzara for the handling of issues arising from the motor-vehicle accident. Plaintiff hired a new lawyer during the pendency of the proceedings but subsequently fired her. Mazzara then handled the motor-vehicle case[1] and later committed suicide after committing embezzlement and getting disbarred.

Plaintiff was not pleased with the results of his case and filed a legal malpractice action against Mazzara's estate, the bank where Mazzara did his banking, and defendant; only the claim

[1] The parties dispute whether defendant was also involved in handling the case.

against defendant remains.[2] In the meantime, plaintiff sought a declaratory judgment against defendant's malpractice insurance company, Medmarc Casualty Insurance Company, which had denied coverage on the basis that defendant and Mazzara were "de facto" partners and thus the policy exclusion for "de facto" partnerships applied. In ruling on a motion for summary disposition, the trial court concluded that there was no "de facto" partnership, that Medmarc had a duty to defend, and that coverage existed for the claim. On appeal, this Court ruled that the trial court did not err in holding that Medmarc had a duty to defend but further ruled that the issue of coverage itself could not be resolved by way of summary disposition. *Ibrahimovic v Medmarc Cas Ins Co*, unpublished opinion per curiam of the Court of Appeals (issued January 19, 2012), slip op at 4-5.

After a stay resulting from defendant's bankruptcy and after other proceedings, defendant filed a motion for summary disposition under MCR 2.116(C)(10), arguing that no attorney-client relationship existed between plaintiff and him. The trial court granted the motion, issuing a detailed opinion that stated, in part:

> Viewing the evidence in the light most favorable to plaintiff, defendant made a single statement that he would work with Mazzara on plaintiff's case; advanced money to plaintiff; and sent a letter to plaintiff's former attorney. On the other hand, plaintiff never executed a retainer agreement with defendant, whereas plaintiff did execute a retainer agreement with Mazzara. Moreover, defendant never performed any work on plaintiff's auto negligence case. Instead, Mazzara handled the case entirely on his own. Furthermore, there is no evidence that plaintiff ever requested that defendant perform any work on his case; that plaintiff or his daughter ever contacted defendant to discuss the case following the meeting at plaintiff's house; or that defendant ever contacted plaintiff following the meeting at plaintiff's house. Under these circumstances, plaintiff could not have had a reasonable belief that he was in an attorney-client relationship with defendant. Accordingly, defendant's motion for summary disposition is properly granted.

Plaintiff contends that the trial court erred in finding no issue of material fact. As stated in *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003):

> Appellate review of the grant or denial of a summary-disposition motion is de novo, and the court views the evidence in the light most favorable to the party opposing the motion. Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the

[2] A settlement was reached with the bank, and the claim against Mazzara's estate was dismissed; apparently, no assets from it were available.

> opposing party, leaves open an issue upon which reasonable minds might differ. [Citation omitted.]

Plaintiff's daughter, Selma Ibrahimovic, testified that Mazzara and defendant came to plaintiff's house for a meeting concerning plaintiff's choice of lawyers. Selma testified, in part:

> Well, we had talked about the case and Mr. Zimmerman and Mazzara said for my dad to take the case -- take Mr. Mazzara back as his attorney and that's when Mr. Zimmerman said that he would -- he would work with Mr. Mazzara together on the case and make sure everything gets done with regards to the case.

Plaintiff testified that "Mazzara and [defendant]" gave him $1,000 to help him with expenses until insurance payments kicked in; he stated that defendant physically handed him the money. Defendant denied giving plaintiff any money. After the meeting at plaintiff's house, defendant sent a letter to plaintiff's former attorney stating that plaintiff had "decided to go back to my original attorneys . . . ." Defendant testified that he was not sure why the letter referred to the plural "attorneys" because defendant had only one attorney—Mazzara.

Plaintiff contends that Selma's testimony, plaintiff's testimony about the money, and the letter sent by defendant all raised a genuine issue of material fact concerning whether an attorney-client relationship existed between defendant and him. In *Scott v Green*, 140 Mich App 384, 400-401; 364 NW2d 709 (1985), this Court stated:

> Where an attorney represents a corporation, the attorney's client is the corporation and not the shareholders. *Fassihi v Sommers, Schwartz, Silver, Schwartz & Tyler, PC*, 107 Mich App 509, 514; 309 NW2d 645 (1981). Plaintiff introduced nothing at trial to contradict this proposition that defendant's client was the corporation, Chumbley Chevrolet, and not plaintiff, even though, as plaintiff stated, he "was part of the corporation."
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> *Although plaintiff may have mistakenly believed that defendant was looking out for plaintiff's interests at the same time defendant was representing the corporation, a unilateral act is not sufficient to create an attorney-client relationship, the attorney-client relationship being based in contract. Fletcher v Bd of Ed of School Dist Fractional No 5*, 323 Mich 343, 348; 35 NW2d 177 (1948). Plaintiff points to no action on defendant's part that might signify that defendant was plaintiff's attorney as opposed to the dealership's, and according to *Fassihi* defendant could not be both. Therefore, a directed verdict on the legal malpractice claim was proper. [Emphasis added.]

Even viewing the evidence in the light most favorable to plaintiff, there was insufficient evidence here of the required *contractual* relationship. *Id.* While Selma testified about defendant's statement that he would "make sure everything gets done with regards to the case," this was coupled with her statement that defendant "said for my dad to . . . take *Mr. Mazzara* back as his attorney . . ." (emphasis added). With regard to the letter, we cannot see how a letter *sent to plaintiff's former attorney* and using the plural "attorneys" evidences a contractual attorney-client relationship between plaintiff and defendant; nor can we see how plaintiff's

testimony about the $1000 evidences such a relationship either. Significantly, plaintiff testified that this payment was from "Mazzara and [defendant]," but as noted by the trial court, plaintiff signed a contract with Mazzara and not with defendant and there is no evidence of defendant's having done any work on the case. The trial court did not err in finding that no reasonable juror could conclude that an attorney-client relationship existed between plaintiff and defendant.

Plaintiff contends that the trial court failed to consider whether defendant was undertaking a "supervisory" role over Mazzara; plaintiff points to expert-witness deposition testimony, presented in a motion for rehearing, stating that such a "supervisory" relationship can exist. We agree with defendant that "the expert testimony relied upon by plaintiff has no bearing on the proper outcome of this appeal." The witnesses merely stated that a "supervisory" attorney-client relationship can theoretically exist. As noted, there was insufficient evidence here of a contractual attorney-client relationship, whether "supervisory" or otherwise.

Plaintiff also contends that the trial court's ruling must be reversed because it contradicts the earlier Court of Appeals opinion, in which this Court stated that "[t]he disparity in the factual evidence regarding the relationship between Mazzara and Zimmerman and the statements made by Zimmerman reading the services he would provide to induce plaintiff to return to his 'original attorneys[]' cannot be resolved by summary disposition." *Ibrahimovic*, *supra*, slip op at 4.

In *Driver v Handley (After Remand)*, 226 Mich App 558, 565; 575 NW2d 31 (1997), this Court stated that "[t]he law of the case doctrine provides that a ruling by an appellate court with regard to a particular issue binds the appellate court and all lower tribunals with respect to that issue." As noted by defendant and also by the trial court, the Court of Appeals in *Ibrahimovic* was not addressing whether plaintiff and defendant had entered into an attorney-client relationship with each other but was addressing the issue of partnership. As such, the *Ibrahimovic* opinion is not binding for purposes of the present appeal. Plaintiff also contends that the trial court erred because an earlier trial judge had denied a motion for summary disposition that was brought early in the case. However, MCR 2.604(A) states that "an order . . . adjudicating fewer than all the claims . . . is subject to revision before entry of final judgment . . . ." No error is apparent.

Affirmed.

/s/ David H. Sawyer
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood